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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/761,008

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Richard Baker

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EXAMINER

LEFF, STEVEN N

ART UNIT

PAPER NUMBER

1794

NOTIFICATION DATE

DELIVERY MODE

12/18/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/761,008	<b>Applicant(s)</b> BAKER ET AL.	
	<b>Examiner</b> STEVEN LEFF	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 13-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11, and 13-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/6/08 has been entered.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

- Claims 1-11, and 13-40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
  - With respect to claim 1 the phrase "providing a consistency-maintaining food product having a gravity flowability" is rejected as the metes and bounds of the claims are unattainable due to the parameters being undefined. For example, it is unclear at what temperature the food product is being provided, i.e. room temperature, in a heated environment, or in a cooled or frozen environment as the environment directly affects whether the food product is provided is at a consistency-maintaining state which is capable of a gravity flowable state, in a gravity flowable state, or if the product to be delivered is in a consistency-maintaining state and has a gravity flowability at the time of printing.
  - With respect to claim 1 the phrase "applying a jettable media to the food product" is rejected as the phrase "the food product" on lines 3 and 6 of claim 1 lacks antecedent basis and thus it is unclear if the food product which is provided is at a consistency-maintaining state which is capable of a gravity flowable state, in only a gravity flowable state, or if the product to be delivered is in a consistency-maintaining state and has a gravity flowability.

- With respect to claim 27 the phrase "providing a food product having a gravity flowability" is rejected as it is unclear if the food product is provided in a gravity flowable state, or if the product is capable of a gravity flowable state by providing a specific environment.
- The phrase "at room temperature" in claims 17, 24, is rejected, as it is a relative term, which renders the claim indefinite. The term "at room temperature" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is unclear as to what is encompassed by the phrase "at room temperature"; it is unclear as to what degree of difference is encompassed by this phrase, since a walk-in freezer would have one room temperature which is different from the room temperature of a heated environment.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
- Claims 1, 5-8, 10-11, 15-16, and 19-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Willcocks et al. (WO 01/94116).

Willcocks et al. teach a method for printing high-resolution images on an edible substrate. The printing of the image on the edible substrate is accomplished with the use of a drop on demand ink-jet printer that uses food grade ink and is capable of obtaining resolution of

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greater than 200 dpi. (pg. 6 line 21+) Willcocks et al. further disclose that the edible substrate may be chocolate, or ice cream (pg. 20 lines 9+) and that the image quality and resolution is dependant upon the surface chemistry of the ink and the edible substrate. (pg. 22 line 12+) “Other embodiments according to the invention which can have advantageous effect on image quality include, controlling the surface energy of the chocolate by changing the temperature of the substrate of the ink.” (pg. 22 line 12+)

Willcocks et al. further teach that the ink is “water based”, (pg. 26 line 10+) or the ink composition may also be substantially “free of water”. (pg. 28 line 20+) Willcocks et al. further teach that the compatibility of the ink with the surface of the edible substrate is critical (pg. 21 line 1+) and that “temperature modulation of the ink cartridge can also be used to advantageously modify or control ink rheology to maximize printing performance.” (pg. 22 line 29+) An alcohol may be added to the ink composition as part of the carrier so that the image will dry quickly once printed, (pg. 28 line 24+) and additionally dyes may be present. (pg. 31 line 4+) The image is finally treated by “drying or fixing the image after the printing step.” (clm. 20)

With regard to the handling of the product once the image has been applied, Willcocks et al. teach using a computer system to manage and coordinate the rapid fulfillment of the customer order. The fulfillment of the orders, or turnaround time, may be on an as-you-wait basis or the customer may return for it at later time (pg. 17 line 13+).

With respect to claims 7, 38, and 40 although Willcocks et al do not teach a specific drop volume, Willcocks et al. does teach the use of a drop on demand ink jet printer for producing images on edible substrates where the resolution of the image should be greater than 200 dpi, where Willcocks et al. specifically teach a resolution of up to 1200 dpi. Therefore, since the referenced printing means and resolution meet those of the instant claims, and due to the fact that resolution is a direct result of drop size, it would be expected that the drop volume would meet the limitations of the instant claims, absent any clear and convincing evidence and/or arguments to the contrary. Further the patent office does not possess the facilities to test the claimed invention and those of the reference. The Office action has set forth a prima facie case of obviousness, and thus the burden shifts to applicant to demonstrate otherwise. Thus the claimed invention is obvious over the reference and therefore it would be expected that the drop volume of the edible media would meet the limitations of the claims, absent any clear and convincing evidence or arguments to the contrary.

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Further, although Willcocks et al. do not disclose specifically treating the ice cream by cooling and/or freezing to a specific temperature, Willcocks et al. do teach that the image is treated by “drying or fixing the image after the printing step”, (clm. 20) and further disclose the use of ice cream as the edible substrate (pg. 20 lines 9+). Since the reference states that the edible substrate is ice cream and that the edible substrate is treated by “fixing the image after the printing step”, it is proper to take into account not only specific teachings of the reference but also the inferences which one skilled in the art would reasonably be expected to draw therefrom.” (see MPEP 2144.01)

Therefore since Willcocks et al. teaches the claimed method, fixing the image after the printing step, in addition to teaching ice cream, where if not kept cool ice cream will melt, it would have been obvious to one of ordinary skill in the art to teach cooling the food product or that the food product is solidified in order to maintain the resolution of the image since the melted material would cause the ink to “run” or “bleed” and thus in the instant case the “fixing step” is taken to mean cooling or freezing to a specific temperature in order to keep the ice cream from melting, or the product or coating from “running” or “bleeding”, flows logically from having been taught in the prior art (see MPEP 2144.06) thus yielding predictable results to one of ordinary skill in the art at the time of the invention.

It would have further been obvious since one of ordinary skill in the art would not expect the instant claims to perform differently than the prior art method, thus the claimed method is not patentably distinct from the prior art method (See MPEP 2144.04 IV A). “Where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation,” (see MPEP 2144.05 IIA), as the normal desire of scientists or artisans to improve upon what is already generally known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of percentages” (see MPEP 2144.05 IIA) for optimizing and achieving the desired resolution, with respect to a specific food item at a specific desired consistency as is taught by Willcock et al. (pg. 20).

With respect to claims 5, 28, and 29 although Willcocks et al. do not specifically state how or when the edible substrate is packaged, Willcocks et al. does teach using a computer system to manage and coordinate the rapid fulfillment of the customer order. The fulfillment of the orders, or turnaround time, may be on an as-you-wait basis or the customer may return for it at later time. (pg. 17 line 13+) One of ordinary skill in the art would have been motivated to

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contain the edible substrate in a container after the application of the image for shipping and/or transporting purposes in order to protect the edible substrate from the environment. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention by the applicant to have provided a container prior to or after printing for protecting the edible substrate after the image has been applied for packaging purposes.

With regard to claims 26, 31, 33, and 34 Willcocks et al. do not teach a value in terms of the amount of image bleed, which directly affects the resolution of the image. The degree that an image bleeds is dependant upon different factors, such as the surface characteristics of the substrate and the media used, as well as the amount of time it takes the image to dry after being applied. In addition, Willcocks et al. teach an ink composition, which includes alcohol for its art recognized and applicant's intended function of reducing the bleed of the ink once applied to the substrate. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention by the applicant to recite an image bleed value in order to ensure that the desired image resolution is achieved as is desired by Willcocks et al. with respect to an unspecified food item.

Further, since Willcocks et al. teach that alcohol may be included in the media for its art recognized and applicant's intended function of achieving a desired resolution, and since the referenced method and materials meet those of the instant claims, it would be expected that the resulting product, an edible substrate with an image applied, would thus meet the limitations of the claims, as it would not have involved an inventive step for one of ordinary skill in the art to have selected a specific "image bleed" value for use in the invention as disclosed since Willcocks teach high resolution images where the image bleed value directly affects the overall resolution of the image as a function of the different factors described above since one of ordinary skill in the art would not expect the method of the instant claims to perform differently than the prior art methods, thus the claimed method is not patentably distinct from the prior art method (See MPEP 2144.04 IV A). "Where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation," (see MPEP 2144.05 IIA), as the normal desire of scientists or artisans to improve upon what is already generally known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of percentages" (see MPEP 2144.05 IIA) to achieve the desired resolution with respect to an undefined food product.

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- Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Willcocks et al. (WO 01/94116) in view of Young (6536345).

Willcocks et al. is taken as above however is silent with respect to the media having a viscosity greater than a viscosity of the food product at a temperature of the food product during application of the media.

Young teaches an apparatus and a method of printing on edible substrates. More specifically Young teaches high resolution printing e.g. 360x260 dots per square inch (col. 6 line 1+) on edible substrates of various viscosities, such as, boiled sugar, ice cream and water (col. 6 line 6+).

Therefore although Willcocks et al. does teach the limitation “the media having a viscosity greater than a viscosity of the food product at a temperature of the food product during application of the media” Willcocks et al. do teach applying media to confections where confections are known to one of ordinary skill in the art to include “sweet” foods such as boiled sugar and hot chocolate and thus since Young not only teaches high-resolution printing on edible substrates such as ice cream and confections, as is also taught by Willcocks et al., but Young further teaches printing on water, and boiled sugar specifically and obtaining a high resolution image.

Therefore since Young specifically teaches printing on edible substrates, where the viscosity of the edible substrate can range from solid at room temperature or highly viscous, all the way to a minimally viscous substrate such as water, one of ordinary skill in the art at the time of the invention by the applicant would have been motivated to combine the teachings of Willcocks et al. and Young in order to provide decorated edible substrates of different viscosities thus producing an edible substrate which would be more appealing to a larger group of people, in particular children, due to its increased aesthetic appeal. Further, since the specific edible substrate which is to be printed on is merely a consumers choice which is recognized in the art as is taught by Young and evidenced by the fact that Young prints high resolution pictures on such a wide variety of edible substrates with different viscosities and since Willcocks et al specifically teach the desire to provide an ink composition which is compatible with the substrate surface in order to provide a resolute image, one of ordinary skill would have further been motivated to adjust the specific working parameters such that the media has a viscosity greater than a viscosity of the food product at a temperature of the food product during application of the media, as addressed above, for the purpose of producing a high resolution image on an edible substrate of



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the consumer's choice where the viscosity of the media is determined by the edible substrate itself since a minimally viscous fluid such as water would require a more viscous media to be applied in order to achieve the desired resolution on the surface due to the fact that if the media is not more viscous than the water then the image will bleed or diffuse into the substrate since the substrate does not have a stable surface layer, where the more viscous media is less flowable and thus able to maintain the desired image in the desired substrate since the media is less prone to "run" since the media may be "free of water" as is taught by Willcocks et al. (pg. 28 line 20+).

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Willcocks et al. and Young and adjust the specific working parameters, and specifically that the media has a viscosity greater than a viscosity of the food product at a temperature of the food product during application of the media, for the purpose of producing a high resolution image on an edible substrate of the consumer's choice, and to further teach a method of printing which is capable of not only printing on viscous substrates but further on minimally viscous substrates due to the fact that the provision of providing an image on an edible substrate is a desirable feature, which would further enhance the substrate's overall appearance thereby further increasing sales.

Further, although Willcocks et al. do not disclose specifically treating the ice cream by cooling and/or freezing to a specific temperature, Willcocks et al. do teach that the image is treated by "drying or fixing the image after the printing step", (clm. 20) and further disclose the use of ice cream as the edible substrate (pg. 20 lines 9+). Since the reference states that the edible substrate is ice cream and that the edible substrate is treated by "fixing the image after the printing step", it is proper to take into account not only specific teachings of the reference but also the inferences which one skilled in the art would reasonably be expected to draw therefrom." (see MPEP 2144.01)

Therefore since Willcocks et al. teaches the claimed method, fixing the image after the printing step, in addition to teaching ice cream, where if not kept cool ice cream will melt, it would have been obvious to one of ordinary skill in the art to teach cooling the food product or that the food product is solidified in order to maintain the resolution of the image since the melted material would cause the ink to "run" or "bleed" and thus in the instant case the "fixing step" is taken to mean cooling or freezing to a specific temperature in order to keep the ice cream from melting, or the product or coating from "running" or "bleeding", flows logically from having

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been taught in the prior art (see MPEP 2144.06) thus yielding predictable results to one of ordinary skill in the art at the time of the invention.

It would have further been obvious since one of ordinary skill in the art would not expect the instant claims to perform differently than the prior art method, thus the claimed method is not patentably distinct from the prior art method (See MPEP 2144.04 IV A). "Where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation," (see MPEP 2144.05 IIA), as the normal desire of scientists or artisans to improve upon what is already generally known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of percentages" (see MPEP 2144.05 IIA) for optimizing and achieving the desired resolution, with respect to a specific food item at a specific desired consistency as is taught by Willcock et al. (pg. 20).

- Claims 9, 13, 14, and 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Willcocks et al. (WO 01/94116) in view of Young (6536345) and further in view of Baker et al. (5938826).

Willcocks et al. are taken as above.

Young et al. is taken as above.

Baker et al. teaches applying marks to "food products" (col. 5 line 22) using "hot melt inks which are solid at room temperature and liquid at temperatures above room temperature. Hot melt inks can be used, for example, in ink jet printing. During ink jet printing, the ink is heated so that it becomes liquid, and then is ejected through a print head onto a substrate. The ink then solidifies on the substrate." (col. 1 lines 5+) The ink has a targeted melt viscosity of about 5 to 100 centipoise, (col. 3 line 10+) an auto-dispersing or a non-dispersible wax (clms. 1 and 10) and is ejected by activation of the PZT (piezoelectric transducer). (col. 5 line 9+)

With respect to claims 9, 13, 14, and 17-18, Willcocks et al do not teach the use of a piezoelectric ink jet printer, and further does not teach the use of an ejection media which has a viscosity of about 70-100 cps. at room temperature, or 8-20 cps. under ejection conditions. However, since the provision of providing an image on an edible substrate is a desirable feature, which would further enhance the substrate's overall appearance, one of ordinary skill in the art would have been motivated to combine the teaching of Willcocks et al., Young, and Baker et al. in order to produce an edible substrate with an image using a piezoelectric ink jet printer, thus

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further automating the method and producing a more resolute image. The selection and use of a particular printer known in the art would not have involved an inventive step and therefore would have been obvious to one of ordinary skill in the art to utilize, based upon the ink composition, the desired image and substrate utilized. Further, it would have been obvious to one of ordinary skill in the art to use a wax in the composition of the media as is specifically taught by Baker, in order to increase the viscosity of the media to its operational range and thus subsequently increase the number of edible substrates that the image can be applied to.

Therefore with respect to claims 9, 13, 14, and 17-18, it would have been obvious to one of ordinary skill in the art at the time of the invention by the applicant to have produced a substrate with an image that was applied through the use of a piezoelectric ink jet printing in order to provide a more resolute image with respect to the substrate and other parameters.

### ***Response to Arguments***

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., that Willcocks et al. does not teach changing the state of the food product by reducing the gravity flowability thereof is not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In the instant case, claims 1, 27 and 31 do not require that the product have gravity flowability prior to printing but that they merely have a capability of a "gravity flowability", and thus Willcocks et al. is relied upon to teach that the edible substrate is treated by "drying or fixing the image after the printing step", where it is proper to take into account not only specific teachings of the reference but also the inferences which one skilled in the art would reasonably be expected to draw therefrom." (see MPEP 2144.01) In the instant case, one of ordinary skill in the art would view that the "fixing step" could be meant to represent cooling or freezing to a specific temperature in order to keep the ice cream from melting and/or providing it in its well known consumed form of a solid. Therefore since printing on ice cream, where if not kept cool ice cream will melt. In addition, cooling would allow the product to solidify, thereby allowing the image to maintain its high resolution since the melted material is in a set state due to lower the temperatures which lowers the surface energy as is taught by Willcocks et al. (pg. 22 line 24+). Thus it would have been obvious to one of ordinary skill in the art to teach cooling the food product or that the food product is solidified in order to maintain the resolution of the image since the melted material would cause the ink to "run" or "bleed" and thus in the instant case the "fixing step" is

taken to mean cooling or freezing to a specific temperature in order to keep the ice cream from melting, or the product or coating from “running” or “bleeding”.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., that Willcocks et al. does not teach a “consistency-maintaining product” since melted ice-cream has different densities, it is noted that the phrase consistency-maintaining product of a consistent density thereof is not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In the instant case, the Willcocks et al. is taken to positively teach a “consistency-maintaining product” since the specific food product does not change, i.e. a single entity and thus positively teaching a “consistency-maintaining product” with respect to the ice cream and/or chocolate being the same and throughout the printing process. It is further noted that Willcocks et al. positively teach a “consistency-maintaining product” with respect to a predictable taste since the specific food product does not change, i.e. a single entity and thus positively teaching a “consistency-maintaining product” with respect to the ice cream and/or chocolate having a taste which is consistent thereof.

In response to applicant's argument neither Willcocks nor Young teach the desired image bleed it is initially noted that the rejections with respect to the image bleed is with respect to Willcocks et al.

In addition, is noted that applicant has not provided evidence or convincing arguments to support their position, other than to simply disagree with the position of the Office. However, it is noted that “the arguments of counsel cannot take the place of evidence in the record”, *In re Schulze*, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965). It is the examiner's position that the arguments provided by the applicant regarding “a lateral image bleed of about 10% or less in 10 minutes” must be supported by a declaration or affidavit. As set forth in MPEP 716.02(g), “the reason for requiring evidence in a declaration or affidavit form is to obtain the assurances that any statements or representations made are correct, as provided by 35 U.S.C. 24 and 18 U.S.C. 1001”. It is further noted that as was clearly set forth in the Office action the degree that an image bleeds is dependant upon different factors, such as the surface characteristics of the substrate and the media used, as well as the amount of time it takes the image to dry after being applied. In addition, Willcocks et al. teach an ink composition, which includes alcohol for its art recognized and applicant's intended function of reducing the bleed of the ink once applied to the substrate, where Willcocks et al. further teach the addition of alcohol to the media composition as part of the carrier so that the image will dry quickly once printed, (pg. 28 line 24+) and an image resolution of 200 dpi after the image has been applied to the edible substrate using an ink jet

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printer. Therefore since Willcocks et al. teach that alcohol may be included in the media for its art recognized and applicant's intended function of achieving a desired resolution, and since the referenced method and materials meet those of the instant claims, it would be expected that the resulting product, an edible substrate with an image applied, would thus meet the limitations of the claims, as it would not have involved an inventive step for one of ordinary skill in the art to have selected a specific "image bleed" value for use in the invention as disclosed since Willcocks et al. teach high resolution images where the image bleed value directly affects the overall resolution of the image as a function of the different factors described above.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Leff whose telephone number is (571) 272-6527. The examiner can normally be reached on Mon-Fri 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer McNeil can be reached at (571) 272-1540. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Drew E Becker/

Primary Examiner, Art Unit 1794

/Steven Leff/

Examiner, Art Unit 1794